

Appl. No. 10/540,197  
Amdt. Dated June 23, 2008  
Reply to Office Action of March 27, 2008

**REMARKS**

Claims 6-12 and 19-28 are currently pending in this application. By this amendment, Claim 7 has been amended to change the dependency of Claim 7 from Claim 8 to Claim 6. No new matter has been added to this application. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

In the Office Action mailed March 27, 2008, Claim 7 was objected to as improperly depending from Claim 8. Claim 7 has been amended to depend from Claim 6. Applicants respectfully request that this objection be withdrawn.

In the Office Action, Claims 6, 19, 20 and 26 were rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 5,839,639 to Sauer et al. (“Sauer”). Sauer discloses a collapsible anvil assembly and applicator instrument 10 shown in FIGS. 1, 3 and 8 reproduced below. Instrument 10 has a handle housing 12, an outer tube 18 and an anvil assembly 20 including a plurality of anvil segments 21 and an anvil shaft 70. Vacuum holes 112 are provided radially at a distal end of anvil shaft 70 and are communicable with a central bore 114 of anvil shaft 70. An air delivery tube 60 is sealed against a mounting projection 110 (FIG. 3) to provide a source of suction to collapsible anvil assembly 20 to draw tissue against anvil segments 21. Sauer’s applicator 10 functions to secure tissue between a snap cap 106 and a snap cap pocket 104. Applicator 10 is then disengaged from anvil assembly 20 such that an instrument shown in FIG. 16 can be attached to anvil assembly 20.

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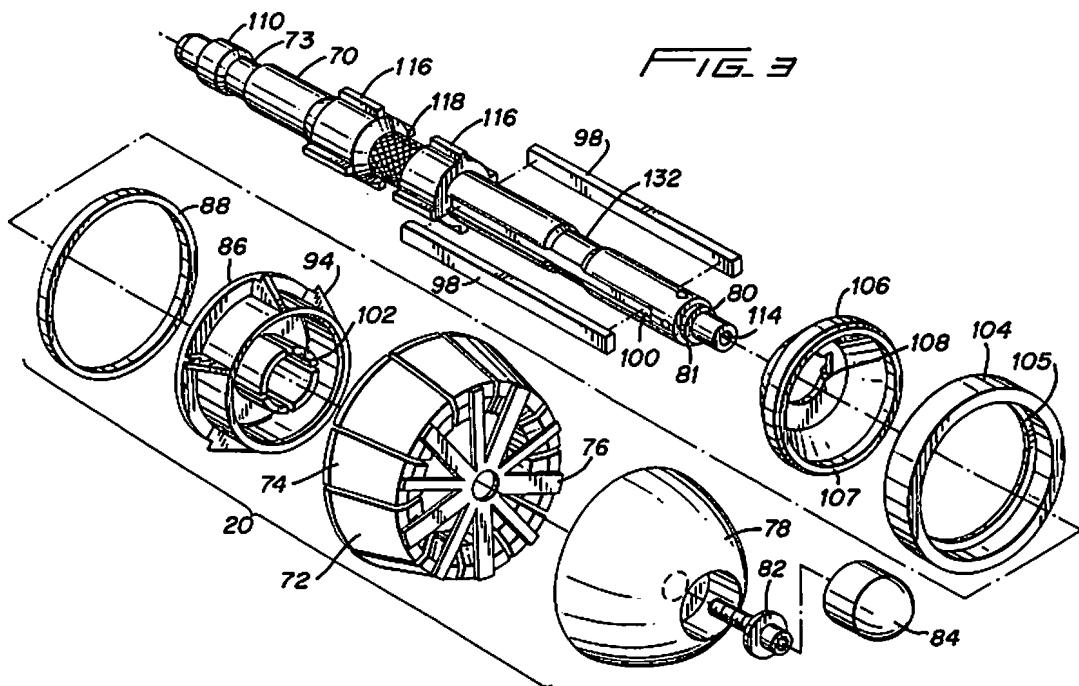
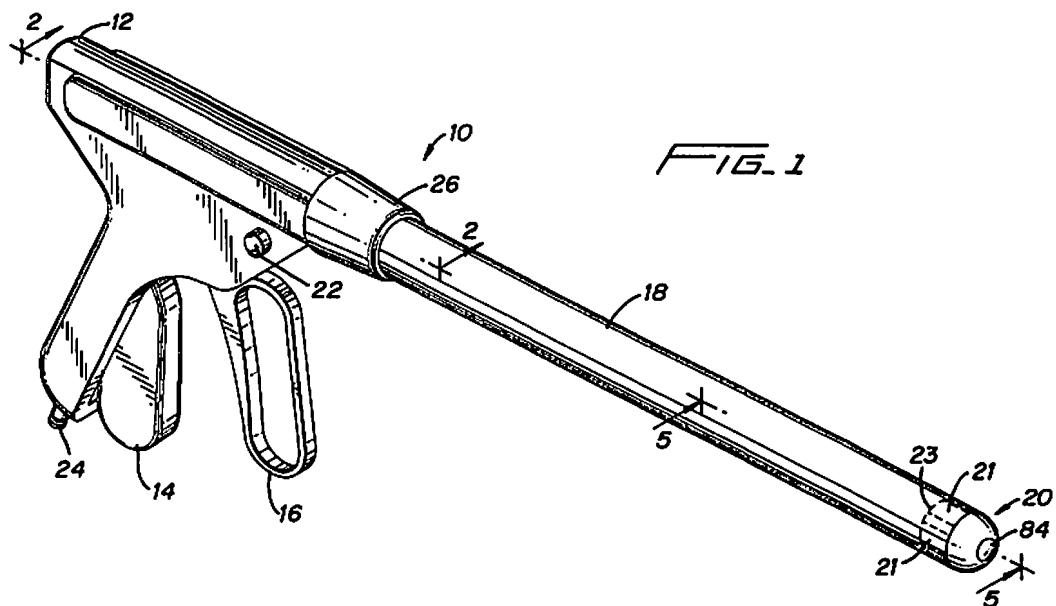


FIG. 8

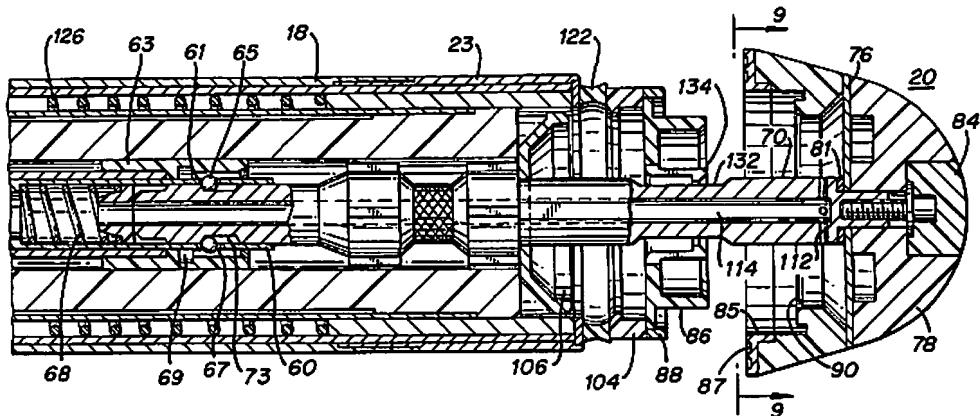
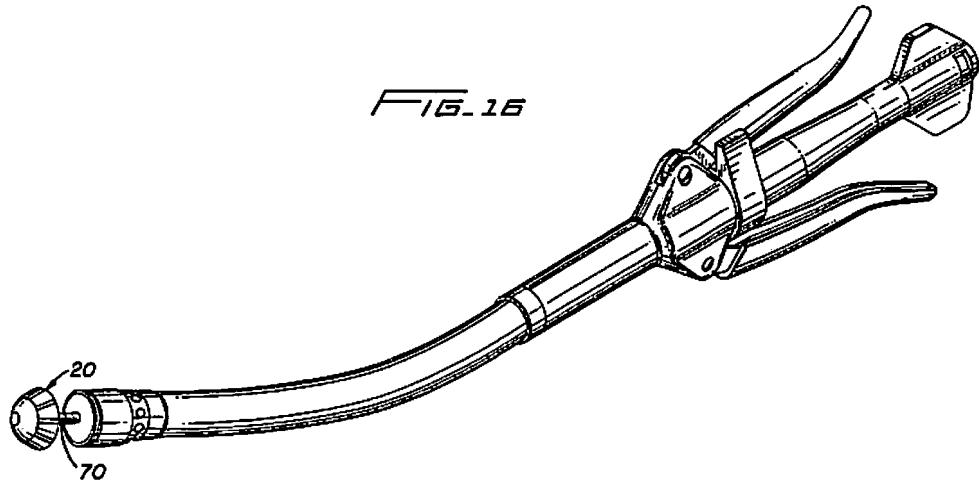


FIG. 16



Claim 6 recites a surgical stapling apparatus and vacuum system comprising, inter alia, a surgical stapling apparatus including a body portion, a shell assembly...positioned on a distal end of the body portion and including an annular array of staples and at least one aperture, and...a vacuum device including a housing and a vacuum conduit, the housing being positioned about at least a portion of the shell assembly of the surgical stapling apparatus to define a vacuum

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chamber, the at least one aperture being positioned within the vacuum chamber, the vacuum conduit communicating with the vacuum chamber, and at least one vacuum tube having a first end positioned within the vacuum chamber and a second end positioned within an inner chamber of the shell assembly.

Applicants respectfully submit that Sauer fails to disclose the system recited in Claim 6. More specifically, Sauer fails to disclose a vacuum device including a housing which is positioned about at least a portion of the shell assembly of the surgical stapling apparatus to define a vacuum chamber as recited in Claim 6. In contrast, Sauer's instrument merely has a central bore 114 in anvil shaft 70 and vacuum holes 112 which radiate outwardly from central bore 114. Sauer also fails to disclose at least one vacuum tube having a first end positioned within the vacuum and a second end positioned within an inner chamber of the shell assembly as recited in Claim 6.

In the Office Action, the Examiner stated the following:

“Sauer et al. discloses a surgical stapling apparatus and vacuum system comprising: a shell assembly 18 positioned on a distal end and proximal end of a body portion 26; a movable anvil 20; an array of staples 23; an aperture 62; an annular knife (column 7 lines 43-46); a hollow vacuum housing sleeve 12 positioned about a proximal end of the shell assembly 18 to define a vacuum chamber and the distal end of the body 26, wherein the at least one aperture 60 is positioned within the vacuum chamber (figure 2); a vacuum conduit 58 communicating with the vacuum chamber; and at least one vacuum tube 60, 70 having a first end 60 positioned within the vacuum chamber and a second end 70 positioned within an inner chamber of the shell assembly 18.”

Applicants respectfully disagree with the Examiner's characterization of Sauer. More specifically, Sauer's “shell assembly 18” (as identified by the Examiner) is actually the outer tube

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of the applicator 10 and Sauer's "array of staples 23" (as identified by the examiner) is actually a cartridge housing which maintains the collapsible anvil within a distal end of outer tube 18. The "hollow vacuum sleeve 12" (as identified by the examiner) is actually the handle housing which is spaced from the anvil assembly by the length of outer tube 18. Even assuming that Examiner's characterization of Sauer's device is reasonable, which Applicants clearly do not, Sauer still does not disclose, *inter alia*, a housing positioned about at least a portion of the shell assembly of the surgical stapling apparatus to define a vacuum chamber" as recited in Claim 6.

For any one or all of the reasons discussed above, Applicants respectfully submit that Claim 6 patentably defines over Sauer and is in condition for allowance. For at least these same reasons, Applicants also believe that Claims 19, 20 and 26, which depend from Claim 6, are also patentable over Sauer and in condition for allowance.

In the Office Action, Claim 7 was rejected under 35 U.S.C. § 103(a) over Sauer. Claim 7 depends from Claim 6. For at least the reasons discussed above with respect to Claim 6, Applicants believe that Claim 7 is patentable over Sauer and in condition for allowance.

Applicants gratefully acknowledge the Examiner's indication that Claims 8-12 and 21-25 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim. Claims 8-12 and 21-25 depend, either directly or indirectly, from Claim 6. In light of the remarks set forth in this response, Applicants do not believe that any further claim amendments are necessary.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in this application, namely Claims 6-12 and 19-28, are in condition for allowance. Accordingly, early and favorable reconsideration of this application is respectfully

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requested. Should the Examiner feel that a telephone or personal interview may facilitate resolution of any remaining matters, she is respectfully requested to contact Applicant's attorney at the number indicated below.

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. §1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. 21-0550 therefor.

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Respectfully submitted,

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